THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.No.9538 of 2005

Dated: 01.08.2006

Between
B.Narasimha Rao

…..Petitioner

and

1. The Joint Collector (CS) Khammam,
Khammam District and another.

….Respondents

THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.No.9538 of 2005

ORDER:

This writ petition is filed seeking a Mandamus to declare the action of the 1st respondent in issuing show cause notice dated 31.3.2005 as illegal and arbitrary.

It seems that the petitioner was the licence holder under A.P. Petroleum Products (L & D) Order, 1980 for supply of kerosene as hawker to the card holders of fair price shop No.4,5, 21 and 22 of Madhira Village. While so, a show cause notice dated 14.12.2001 was issued asking the petitioner to explain certain irregularities mentioned therein and his licence was suspended. Thereafter, the petitioner submitted his explanation. However, on the basis of a report of the 2nd respondent-Deputy Tahsildar (CS) Madhira dated 13.12.2001, the licence of the petitioner was cancelled. Aggrieved by the same, the petitioner filed an appeal before the Director of Civil Supplies, who, after a detailed consideration of the entire case, by an order dated 10.03.2002 allowed the appeal holding as under:

> "In regard to the contention of the learned counsel that no show cause notice was issued to the appellant offering explanation, the contention of the learned counsel is untenable as per the observation of the Hon'ble High Court of Andhra Pradesh in WP No.19924/98 dated 21.08.1998. In regard to the contention of the learned counsel that the Joint Collector, Khammam , has not furnished a copy of the report dated 13.12.2001 submitted by the

> Dy.Tahsildar (CS) Madhira, cannot be denied as there is no material showing that either a copy of report of Dy. Tahsildar (CS) or the copies of panchanamas recorded by the Dy. Tahsildar (cS) Madhira have been given to the appellant herein. Further, according to the instructions issued in Govt. Memo No.17141/CS.IV/84-2 F & A, dt.5.7.1984 the enquiry report should contain statement of the accused, mediator's report containing full material facts and statements of all the persons involved including person giving supporting evidence. Therefore, the panchanamas recorded by the Dy.Tahsildar (CS) Madhira are not in accordance with the government instructions cited. In regard to the contention of the learned counsel that the order of the Joint Collector, Khammam, in Proceeding No.D/716/2001, dated 14.12.2001 are not specifying whether the orders are issued under Clause 28 (1) or under Clause 28 (2), there is no specific mention under which clause action has been initiated i.e., suspended from 'B' licence pending further action under clause 28 (2) or suspended the form B licence for a specified period."

Thereafter, nothing happened for more than two years. Surprisingly on 31.3.2005 the petitioner was issued with another show cause notice for the very same charges which was the subject matter of appeal in DCS Progs.No.E2/1476/2001 dated 10.03.2002. Aggrieved by the same, the present writ petition has been preferred.

It is the contention of the petitioner that the Director of Civil Supplies allowed the earlier appeal by an order dated 10.03.2002 after having categorically found that the very panchanama recorded by the Deputy Tahsildar is not in accordance with the Government instructions. Therefore, the question of conducting further enquiry and issuing second show cause notice on the basis of very same panchanama is not permissible.

I am in full agreement with the submissions made by the learned counsel for the petitioner. As noticed above, the order of the Director of Civil Supplies would indicate that the Panchanama conducted and recorded by the Deputy Tahsildar was not in accordance with the Government instructions. Therefore, issuing a second show cause notice is nothing but conducting an enquiry into the matter which has attained finality. When the very panchanama on the basis of which the foundation was laid for conducting an enquiry against the petitioner was found to be not correct and not in accordance with the government instructions, issuing of second show cause notice and conducting second enquiry does not arise. Therefore, the impugned order is liable to be set aside.

Accordingly, the writ petition is allowed and the impugned order is set aside. No costs.

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01.08.2006

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